

ELIM NATIVE CORPORATION LAND RESTORATION

NOVEMBER 5, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3090]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3090) to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ELIM NATIVE CORPORATION LAND RESTORATION.

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) is amended by adding at the end the following new section:

“ELIM NATIVE CORPORATION LAND RESTORATION

“SEC. 42. (a) FINDINGS.—The Congress finds that—

“ (1) approximately 350,000 acres of land were withdrawn by Executive Orders in 1917 for the use of the United States Bureau of Education and of the Natives of Indigenous Alaskan race;

“ (2) these lands comprised the Norton Bay Reservation (later referred to as Norton Bay Native Reserve) and were set aside for the benefit of the Native inhabitants of the Eskimo Village of Elim, Alaska;

“ (3) in 1929, an Executive Order deleted 50,000 acres of land from the Norton Bay Reservation;

“ (4) the lands were deleted from the Reservation for the benefit of others;

“ (5) the deleted lands were not available to the Native inhabitants of Elim under section 19(b) of this Act at the time of passage of this Act;

“ (6) the deletion of these lands has been and continues to be a source of deep concern to the indigenous people of Elim; and

“(7) until this matter is dealt with, it will continue to be a source of great frustration and sense of loss among the shareholders of the Elim Native Corporation and their descendants.

“(b) WITHDRAWAL AND AVAILABILITY FOR SELECTION.—The lands described in subsection (c) are withdrawn, subject to valid existing rights, from all forms of appropriation or disposition under the public land laws, including the mining and mineral leasing laws, for a period of 2 years from the date of enactment of this section, for selection by the Elim Native Corporation.

“(c) LANDS DESCRIBED.—The lands described in this section are within the boundary of a parcel of land in the vicinity of Elim, Alaska, more particularly depicted and designated ‘Temporary Withdrawal Area’ on the map dated October 19, 1999, on file with the Bureau of Land Management, and entitled Land Withdrawal Elim Native Corporation.

“(d) AUTHORIZATION TO SELECT AND RECEIVE TITLE TO LANDS; RESERVATION OF EASEMENTS.—The Elim Native Corporation is authorized to select and receive title to 50,000 acres of lands within the boundary of the lands described in subsection (c). The Secretary is authorized and directed to receive and adjudicate a selection application filed by the Elim Native Corporation, and to convey the surface and subsurface estate in the selected lands to the Elim Native Corporation subject to the following rules, conditions, and limitations:

“(1) The Elim Native Corporation shall have 2 years from the date of the enactment of this section in which to file its selection of no more than 60,000 acres of land from the area described in subsection (c). The selection application shall be filed with the Bureau of Land Management, shall describe a single tract adjacent to U.S. Survey No. 2548, Alaska, and shall be reasonably compact, contiguous, and in whole sections except when separated by unavailable land or when the remaining entitlement is less than a whole section. The Elim Native Corporation shall prioritize its selections made pursuant to this section at the time such selections are filed, and such prioritization shall be irrevocable. Any lands selected shall remain withdrawn until conveyed or full entitlement has been achieved.

“(2)(A) The selection filed by the Elim Native Corporation pursuant to this section shall be subject to valid existing rights and may not supercede prior selections of the State of Alaska, any Native corporation, or valid entries of any private individual unless such selection or entry is relinquished prior to any selection by the Elim Native Corporation. Any lands held within the exterior boundaries of lands conveyed to the Elim Native Corporation shall have all rights of ingress and egress to be vested in the inholder and the inholder’s agents, employees, co-venturers, licensees, or subsequent grantees, and such easements shall be reserved in the conveyance to the Elim Native Corporation. Public Land Order 5563 of December 16, 1975, is hereby modified to extend to the lands withdrawn pursuant to this section and the Secretary is authorized, at the Secretary’s discretion, to permit selections and conveyances of hot or medicinal springs (referred to herein as ‘hot springs’) pursuant to this section.

“(B) If any lands are conveyed to Elim Native Corporation which are also subject to withdrawal for hot springs under this section, there shall be in the conveyance the following rights reserved to the United States, covenants, and conditions:

“(i) The right of ingress and egress over easements under 17(b) of this Act for the public to visit the hot springs for noncommercial purposes and to use any part of the hot springs that is not commercially developed.

“(ii) The right of the United States to enter upon the lands for the purpose of conducting scientific research and to use the results of such research without compensation to Elim Native Corporation.

“(iii) A covenant running with the land that commercial development of the hot springs by Elim Native Corporation or its successors, assigns, or grantees shall include the right to develop a maximum of 15 percent of the land upon which the hot springs are located and the land within $\frac{1}{4}$ mile of the land upon which the hot springs are located. Such commercial development shall not alter the natural hydrologic or thermal system associated with the hot springs and not less than 85 percent of the lands within $\frac{1}{4}$ mile of the hot springs shall be left in its natural state.

“(C) Elim Native Corporation shall have the right to conduct scientific research on the conveyance lands, including the hot springs, and to use the results of such research without compensation to the United States.

“(D) The Secretary is authorized to negotiate with Elim Native Corporation a memorandum of understanding to implement the provisions of this paragraph.

“(E) The following covenants, terms, and conditions with respect to the conveyance lands shall be incorporated into the interim conveyance and patent, if any, conveying the lands to Elim Native Corporation:

“(i) Upon receipt of the conveyance lands, Elim shall have all legal rights and privileges as landowner, other than reservations, covenants, and conditions specified in this subsection and in the Memorandum of Understanding.

“(ii) Elim Native Corporation shall not engage in or allow Commercial Timber Harvesting on the conveyance lands. ‘Commercial Timber Harvesting’ means—

“(I) cutting and removing from the Elim Native Corporation lands Merchantable Timber for sale; and

“(II) constructing roads and related infrastructure for the support thereof. ‘Merchantable Timber’ means timber that can be harvested and marketed by a prudent operator.

“(iii) To accomplish the purpose of this subsection, the following rights are retained by the United States:

“(I) To enter upon the conveyance lands, after providing reasonable advance notice in writing to Elim Native Corporation, and after providing Elim Native Corporation with a reasonable opportunity to have a representative present upon such entry in order to achieve the purpose and enforce the terms of this subsection.

“(II) To have all rights and remedies available against persons who cut or remove Merchantable Timber with no lawful right to do so in addition to any such rights held by Elim Native Corporation.

“(III) In cooperation with Elim Native Corporation, the right, but not the obligation, to reforest in the event then-existing Merchantable Timber is destroyed by fire, wind, insects, disease, or other similar man-made or natural occurrence (excluding manmade occurrences resulting from the exercise by Elim Native Corporation of its lawful rights to use the conveyance lands).

“(iv) The foregoing provisions are covenants running with the land.

“(v) Elim Native Corporation shall incorporate the terms of this subsection in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the conveyance lands, including without limitation a leasehold interest.

“(vi) The covenants, terms, conditions, and restrictions of this subsection are covenants running with the land and shall be binding upon Elim Native Corporation and the United States, their successors and assigns.

“(vii) Appropriate administration and enforcement provisions shall be incorporated into the Memorandum of Understanding authorized by this subsection.

“(viii) The United States shall retain the right of prosecutorial discretion without waiver of any such reservations, covenants, or conditions, in the enforcement of any reservation, covenant, or condition.

“(3) The Bureau of Land Management shall reserve easements to the United States for the benefit of the public pursuant to section 17(b) of this Act in the conveyance to the Elim Native Corporation.

“(4) The Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the conveyance to the Elim Native Corporation.

“(e) FINALITY OF SELECTIONS.—Selection by the Elim Native Corporation of lands under subsection (d) and final conveyance of those lands to Elim Native Corporation shall constitute full satisfaction of any claim of entitlement of the Elim Native Corporation with respect to its land entitlements under section 19(b).

“(f) IMPLEMENTATION.—There are authorized to be appropriated such sums as may be necessary to implement this section.”.

SEC. 2. COMMON STOCK TO ADOPTED-OUT DESCENDANTS.

Section 7(h)(1)(C)(iii) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)(1)(C)(iii)) is amended by inserting before the period at the end the following: “, notwithstanding an adoption, relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient”.

SEC. 3. DEFINITION OF SETTLEMENT TRUST.

Section 3(t)(2) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)(2)) is amended by striking “sole” and all that follows through “Stock” and inserting “benefit of shareholders, Natives, and descendants of Natives,”.

PURPOSE OF THE BILL

The purpose of H.R. 3090 is to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3090 will authorize the Elim Native Corporation, a village corporation established under Section 19(b) of the Alaska Native Claims Settlement Act, to select and have conveyed to it 50,000 acres of federal land in an area north of the former Norton Bay Reservation. This acreage would replace 50,000 acres deleted from the Reservation in 1929 by Executive Order from the Reservation established for the benefit and use of people whose descendants are today the shareholders of this Native village corporation.

In 1916, a group of Inupiat Eskimos, whose ancestors had lived in the Norton Bay region for centuries, were relocated from Golovin Mission to a camp at what is today Elim, Alaska. The people reportedly were suffering from measles, diphtheria, and tuberculosis and other diseases they were exposed to by the influx of non-Native settlers working in the gold mining and other industries in the vicinity of Nome and Golovin.

The area in which Golovin Mission was located was "barren and that the Eskimos could not support themselves there * * *." The location the people were moved to had "an abundance of supply of fish, game, timber and reindeer moss * * *." The site also was chosen apparently because of the presence of a fresh water spring and nearby medicinal hot springs.

In 1917, by Executive Order Number 2508 (January 3, 1917) (amended by Executive Order Number 2525 (February 6, 1917)), the federal government established a reservation around the Native village of Elim on Norton Bay, about 110 miles southeast of Nome, Alaska. The Executive Order set aside the reservation for the benefit and "use of the United States Bureau of Education and of the natives of indigenous Alaskan race * * *." At the time of its establishment, the Reservation was approximately 350,000 acres.

In 1919, Congress passed a law that prohibited the withdrawal of public lands for an Indian reservation except by act of Congress. Eight years later, Congress mandated that, except for temporary withdrawals by the Secretary of the Interior, changes "in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress."

Notwithstanding the 1919 and 1927 changes in law, the President issued Executive Order 5207 (October 12, 1929), revoking approximately 50,000 acres of the Norton Bay Reservation. This Executive Order first opened the lands to entry by ex-servicemen of World War I, as required by the Act of February 14, 1920, 41 Stat. 434, as amended, 42 Stat. 358, 1067. After this 91 day period, in which no serviceman sought entry, the lands were opened up to entry by the general public.

Until recently, the background as to why the lands were deleted from the Norton Bay Reservation was not readily available. However, it appears now that there were multiple attempts by non-Na-

tives to obtain modifications of the Executive Orders establishing the Norton Bay Reservation to open up all or part of the Reservation for commercial uses such as fur farming and mining by non-Natives. Such attempts were successful in 1929 but not in 1934, when Secretary of the Interior Harold Ickes halted the additional attempts to open much of the Reservation to mining for the benefit of non-Natives.

It also appears that, to the extent there was any consultation with the Native people of Elim prior to the 1929 deletion, such consultation was inadequate and cannot be construed as obtaining informed consent from the Native people directly affected. This was particularly so considering the lack of Native community experience and knowledge of the non-Native political and governmental process, and because the residents of Elim at that time had become American citizens only five years prior in 1924. However, the oral history of the villagers indicates that they were not informed and did not give their consent to government actions to delete the lands in question.

The deletion became particularly significant in 1971, when Congress passed the Alaska Native Claims Settlement Act (ANCSA). Section 19(b) of ANCSA provided certain Native villages which previously had been located on reservation land the option of taking title to the reservation lands surrounding their villages as of 1971 or a different settlement involving lands, money, and rights to revenue sharing. The village of Elim was offered and took title to the lands making up the Norton Bay Reservation. However, the 1929 deletion had effectively reduced Elim's entitlement to Norton Bay Reservation lands by 50,000 acres. Although the people of Elim felt that the lands had been wrongly taken from them in 1929, they did not have the wherewithall or documentation to prove it. It also appears that no one within government knew the facts surrounding this deletion since the facts were not raised nor made known to Elim during the establishment of their ANCSA Section 19(b) Native corporation and the identification of their land base.

Some of the prime coastal lands deleted in 1929 have since been selected by and some conveyed to another Native village corporation under ANCSA. In this situation, it does not appear prudent to attempt to restore the lands deleted but rather to replace them from other federal lands which can be made available for selection under this legislation.

In light of the background and historical setting regarding this land deletion, the Committee believes that this particular case warrants remedial action by Congress. The Committee seeks to do that by having Congress authorize Elim, on behalf of its Native shareholders, select and have conveyed to it 50,000 acres of lands north of and adjacent to the original Norton Bay Reservation, subject to certain covenants, reservations, terms and conditions.

Because of the particular situation surrounding the deletion and the opportunity afforded to Elim to have such lands replaced, and considering the natural resources those lands contain, the Committee has developed, in consultation with the Department of the Interior, Elim, and others, certain covenants, reservations, terms and conditions to be included in the conveyance to Elim. These provisions would help conserve fish and wildlife habitat on the lands

conveyed, as well as hot and medicinal springs, and provide certain access to the public while providing Elim with the bulk of the rights of ownership so it can make beneficial and economic use of the lands as envisioned in ANCSA. The Committee expects this balancing of interests to be implemented in a sensible way so as to provide Elim with the capability to utilize the lands in an economically productive and sustainable way while providing important safeguards to the fish and wildlife and other natural resources on which the Elim Native Corporation shareholders rely to some extent today and will more so into the future.

The Committee believes that, considering this special and unique set of circumstances, this legislation will help remedy in an appropriate way the inequity in this case and help alleviate a source of great concern, frustration and feeling of loss to the people of Elim.

COMMITTEE ACTION

H.R. 3090 was introduced on October 18, 1999, by Congressman Don Young. The bill was referred to the Committee on Resources. On October 13, 1999, the Committee held a hearing on H.R. 3013, which contains the three sections of H.R. 3090. On October 20, 1999, the Committee met to mark up the bill. Congressman Don Young offered an amendment which clarified the conditions surrounding the land selection and conveyance. The amendment was adopted by voice vote, and the bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Elim Native Corporation Land Restoration

This section amends the Alaska Native Claims Settlement Act by adding a new Section 42, Elim Native Corporation Land Restoration.

Subsection (a) sets out findings regarding the background and need for the legislation.

Subsection (b) withdraws the lands described in subsection (c) from all forms of appropriation under the public land laws for a two-year period. This withdrawal would authorize Elim Native Corporation to select, subject to valid existing rights, lands under this new section.

Subsection (c) describes the withdrawn lands by reference to a map dated October 19, 1999. The designation "Temporary Withdrawal Area" on the map depicts the lands which are to be withdrawn and from which Elim would select replacement acreage.

Subsection (d) authorizes Elim to select and ultimately receive title to 50,000 acres of lands from the lands inside the Temporary Withdrawal Area. The Department of the Interior shall process the selections by Elim Native Corporation and convey the fee to the surface and subsurface estate in the selected lands, subject to the rules, conditions, and limitations described below.

Subsection (d)(1) provides two years after the date of enactment for Elim to make its selections. To ensure that it receives the 50,000 acres, Elim may select up to 60,000 acres and must prioritize its selections at the time it makes the selections. Elim may not revoke or change its priorities. Elim must select a single

tract of land adjacent to U.S. Survey No. 2548, Alaska, that is reasonably compact, contiguous, and in whole sections except for two situations. The withdrawn lands remain withdrawn until the Department has conveyed all the lands that Elim Native Corporation is entitled to under this legislation.

Subsection (d)(2)(A) provides that, in addition to being subject to valid existing rights, Elim's selections may not supersede prior selections by the State of Alaska or other Native corporations, or valid entries by private individuals unless the State, Native corporation, or individual relinquishes the selection or entry prior to selection by Elim. Rights of ingress and egress will vest in the inholder, if any, or the inholder's agent and be reflected as an easement reserved in the conveyance to Elim. Public Land Order 5563, which made the hot springs previously reserved in Alaska available to ANCSA Native corporations for selection, is modified so as to authorize the Secretary to permit selections by Elim of hot or medicinal springs.

Subsection (d)(2)(B) reserves to the United States certain covenants and conditions including the right of the public to visit for non-commercial purposes the hot springs conveyed to Elim, if any, and to conduct scientific research on the hot springs and to use the research without compensation to Elim. Development would be limited to only 15 percent of the land on which the hot springs are located and on lands within $\frac{1}{4}$ mile from the hot springs. Such development must not alter, however, the natural hydrologic or thermal system associated with the hot springs. Elim would be able to conduct scientific research on the conveyed lands without compensation to the United States.

Subsection (d)(2)(D) authorizes the Department of the Interior to enter into a Memorandum of Understanding (MOU) with Elim regarding provisions of the paragraph.

Subsection (d)(2)(E) provides that the conveyance include the specified covenants, terms and conditions and that Elim would have, on receipt of the lands, all legal rights and privileges of a landowner other than the reservations, covenants and conditions specified in the subsection and the MOU. Elim is not permitted to engage in commercial timber harvesting (a defined term) on the conveyed lands. The paragraph provides for certain retained rights to the United States: (1) the right to enter Elim Native Corporation's conveyance lands to enforce the provision; (2) rights and remedies against persons violating the restriction on commercial timber harvesting; and (3) the right to reforest, in cooperation with Elim Native Corporation if merchantable timber is destroyed. The paragraph also provides for incorporating appropriate administrative and enforcement provisions in any MOU the parties enter into, and the right of prosecutorial discretion without waiver of the reservation, covenant, or condition if the United States does not prosecute or enforce the reservation, covenant, or condition.

Subsection (d)(3) and (4) reserves public access easements under Section 17(b) of ANCSA, and provides authority to reserve an easement for the Iditarod National Historic Trail.

Subsection (e) makes clear that selection by and conveyance to Elim Native Corporation of these lands is in full satisfaction of any

claim by Elim Native Corporation of entitlement of lands under Section 19(b) of ANCSA.

Subsection (f) authorizes appropriations as may be necessary to implement subsection (c).

Section 2. Common stock to adopted-out descendants

Section 7(h) of ANCSA sets forth the general rules pertaining to the issuance and transfer of common stock in an Alaska Native Corporation, which stock is referred to as Settlement Common Stock. Generally, the holder of Settlement Common Stock is not permitted to sell, pledge or otherwise alienate this stock. However, Section 7(h)(1)(C) of ANCSA provides certain exceptions to the general prohibition on the alienation of Settlement Common Stock. Under Section 7(h)(1)(C)(iii), the holder of Settlement Common Stock may transfer some or all of the Settlement Common Stock to a close family member by inter vivos gift. Gifts of Settlement Common Stock are permitted to, among others, a child, grandchild or great-grandchild.

Alaska State law has been interpreted to sever, for all purposes, the relationship between a family and a child who has been adopted out, or for whom parental rights have been relinquished or terminated. Thus, under existing law, a holder of Settlement Common Stock may not make an inter vivos gift transfer of Settlement Common Stock to a child who has been adopted by another family. The proposed amendment in Section 2 will permit the biological family of an Alaska Native child to make an inter vivos gift to that child of Settlement Common Stock, regardless of the child's adoption into a non-Native family, or the relinquishment or termination of parental rights. The enactment of the provisions of Section 2 will resolve the problem currently faced by some Alaska Native children who are unable to receive shares in an Alaska Native Corporation because the relationship with their biological family has been legally severed under Alaska State law.

Section 3. Definition of settlement trust

Congress enacted the settlement trust option in ANCSA to allow Alaska Native Corporations to establish trusts to hold assets for the benefit of Alaska Native Shareholders. As the law currently stands, these trusts may only benefit holders of Settlement Common Stock. The amendments contained in Section 3 of the bill will permit Native Corporation shareholders, by the vote of a majority of shares, to extend this benefit of ANCSA to all of the Native people in their community, including the children and grandchildren of the original stockholders, regardless of whether they yet own stock in the Native Corporation. This amendment redefines "settlement trust" to permit Native Corporations to establish settlement trusts in which potential beneficiaries include shareholders, Natives and descendants of Natives. Because ANCSA was enacted to benefit all Natives, this amendment is in keeping with the original intent of that legislation. At the same time, the interests of Alaska Native Corporation shareholders are protected because this option is available only to those Corporations whose shareholders vote, by a majority of all outstanding voting shares, to benefit non-shareholders.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 3, 1999.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3090, a bill to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria Heid Hall (for federal costs), and Marjorie Miller (for the state, local, and tribal impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, *Director*).

Enclosure.

H.R. 3090—A bill to amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes

CBO estimates that implementing H.R. 3090 would have no significant impact on the federal budget. Because H.R. 3090 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 3090 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enactment of this bill would benefit the Elim Native Corporation.

H.R. 3090 would direct the Secretary of the Interior to convey 50,000 acres of public land administered by the Bureau of Land Management (BLM) in Alaska to the Elim Native Corporation. According to BLM, the area from which the corporation would make the selection currently generates no receipts, and the agency does not expect the land to generate any significant receipts over the next 10 years. Therefore, conveying this acreage to the corporation would not affect the federal budget over that period.

H.R. 3090 also would amend the Alaska Native Claims Settlement Act (ANCSA) to broaden the definition of a “settlement trust” in ANCSA. We estimate that the provision would have no impact on federal spending.

The CBO staff contacts are Victoria Heid Hall (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt any State, local, or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) * * *

* * * * *

(t) "Settlement Trust" means a trust—

(1) * * *

(2) operated for the [sole benefit of the holders of the corporation's Settlement Common Stock] *benefit of shareholders, Natives, and descendants of Natives*, in accordance with section 39 and the laws of the State of Alaska.

* * * * *

REGIONAL CORPORATIONS

SEC. 7. (a) * * *

* * * * *

(h)(1) RIGHTS AND RESTRICTIONS.—(A) * * *

* * * * *

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native—

(i) * * *

* * * * *

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, nephew, or (if the holder has reached the age of majority as defined by the laws of the State of Alaska) brother or sister, *notwithstanding an adoption, relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient.*

* * * * *

ELIM NATIVE CORPORATION LAND RESTORATION

SEC. 42. (a) FINDINGS.—*The Congress finds that—*

(1) *approximately 350,000 acres of land were withdrawn by Executive Orders in 1917 for the use of the United States Bureau of Education and of the Natives of Indigenous Alaskan race;*

(2) *these lands comprised the Norton Bay Reservation (later referred to as Norton Bay Native Reserve) and were set aside for the benefit of the Native inhabitants of the Eskimo Village of Elim, Alaska;*

(3) *in 1929, an Executive Order deleted 50,000 acres of land from the Norton Bay Reservation;*

(4) *the lands were deleted from the Reservation for the benefit of others;*

(5) *the deleted lands were not available to the Native inhabitants of Elim under section 19(b) of this Act at the time of passage of this Act;*

(6) *the deletion of these lands has been and continues to be a source of deep concern to the indigenous people of Elim; and*

(7) *until this matter is dealt with, it will continue to be a source of great frustration and sense of loss among the shareholders of the Elim Native Corporation and their descendants.*

(b) WITHDRAWAL AND AVAILABILITY FOR SELECTION.—*The lands described in subsection (c) are withdrawn, subject to valid existing*

rights, from all forms of appropriation or disposition under the public land laws, including the mining and mineral leasing laws, for a period of 2 years from the date of enactment of this section, for selection by the Elim Native Corporation.

(c) *LANDS DESCRIBED.*—The lands described in this section are within the boundary of a parcel of land in the vicinity of Elim, Alaska, more particularly depicted and designated “Temporary Withdrawal Area” on the map dated October 19, 1999, on file with the Bureau of Land Management, and entitled Land Withdrawal Elim Native Corporation.

(d) *AUTHORIZATION TO SELECT AND RECEIVE TITLE TO LANDS; RESERVATION OF EASEMENTS.*—The Elim Native Corporation is authorized to select and receive title to 50,000 acres of lands within the boundary of the lands described in subsection (c). The Secretary is authorized and directed to receive and adjudicate a selection application filed by the Elim Native Corporation, and to convey the surface and subsurface estate in the selected lands to the Elim Native Corporation subject to the following rules, conditions, and limitations:

(1) The Elim Native Corporation shall have 2 years from the date of the enactment of this section in which to file its selection of no more than 60,000 acres of land from the area described in subsection (c). The selection application shall be filed with the Bureau of Land Management, shall describe a single tract adjacent to U.S. Survey No. 2548, Alaska, and shall be reasonably compact, contiguous, and in whole sections except when separated by unavailable land or when the remaining entitlement is less than a whole section. The Elim Native Corporation shall prioritize its selections made pursuant to this section at the time such selections are filed, and such prioritization shall be irrevocable. Any lands selected shall remain withdrawn until conveyed or full entitlement has been achieved.

(2)(A) The selection filed by the Elim Native Corporation pursuant to this section shall be subject to valid existing rights and may not supercede prior selections of the State of Alaska, any Native corporation, or valid entries of any private individual unless such selection or entry is relinquished prior to any selection by the Elim Native Corporation. Any lands held within the exterior boundaries of lands conveyed to the Elim Native Corporation shall have all rights of ingress and egress to be vested in the inholder and the inholder’s agents, employees, co-venturers, licensees, or subsequent grantees, and such easements shall be reserved in the conveyance to the Elim Native Corporation. Public Land Order 5563 of December 16, 1975, is hereby modified to extend to the lands withdrawn pursuant to this section and the Secretary is authorized, at the Secretary’s discretion, to permit selections and conveyances of hot or medicinal springs (referred to herein as “hot springs”) pursuant to this section.

(B) If any lands are conveyed to Elim Native Corporation which are also subject to withdrawal for hot springs under this section, there shall be in the conveyance the following rights reserved to the United States, covenants, and conditions:

(i) *The right of ingress and egress over easements under 17(b) of this Act for the public to visit the hot springs for noncommercial purposes and to use any part of the hot springs that is not commercially developed.*

(ii) *The right of the United States to enter upon the lands for the purpose of conducting scientific research and to use the results of such research without compensation to Elim Native Corporation.*

(iii) *A covenant running with the land that commercial development of the hot springs by Elim Native Corporation or its successors, assigns, or grantees shall include the right to develop a maximum of 15 percent of the land upon which the hot springs are located and the land within $\frac{1}{4}$ mile of the land upon which the hot springs are located. Such commercial development shall not alter the natural hydrologic or thermal system associated with the hot springs and not less than 85 percent of the lands within $\frac{1}{4}$ mile of the hot springs shall be left in its natural state.*

(C) *Elim Native Corporation shall have the right to conduct scientific research on the conveyance lands, including the hot springs, and to use the results of such research without compensation to the United States.*

(D) *The Secretary is authorized to negotiate with Elim Native Corporation a memorandum of understanding to implement the provisions of this paragraph.*

(E) *The following covenants, terms, and conditions with respect to the conveyance lands shall be incorporated into the interim conveyance and patent, if any, conveying the lands to Elim Native Corporation:*

(i) *Upon receipt of the conveyance lands, Elim shall have all legal rights and privileges as landowner, other than reservations, covenants, and conditions specified in this subsection and in the Memorandum of Understanding.*

(ii) *Elim Native Corporation shall not engage in or allow Commercial Timber Harvesting on the conveyance lands. "Commercial Timber Harvesting" means—*

(I) *cutting and removing from the Elim Native Corporation lands Merchantable Timber for sale; and*

(II) *constructing roads and related infrastructure for the support thereof. "Merchantable Timber" means timber that can be harvested and marketed by a prudent operator.*

(iii) *To accomplish the purpose of this subsection, the following rights are retained by the United States:*

(I) *To enter upon the conveyance lands, after providing reasonable advance notice in writing to Elim Native Corporation, and after providing Elim Native Corporation with a reasonable opportunity to have a representative present upon such entry in order to achieve the purpose and enforce the terms of this subsection.*

(II) *To have all rights and remedies available against persons who cut or remove Merchantable Tim-*

ber with no lawful right to do so in addition to any such rights held by Elim Native Corporation.

(III) In cooperation with Elim Native Corporation, the right, but not the obligation, to reforest in the event then-existing Merchantable Timber is destroyed by fire, wind, insects, disease, or other similar manmade or natural occurrence (excluding manmade occurrences resulting from the exercise by Elim Native Corporation of its lawful rights to use the conveyance lands).

(iv) The foregoing provisions are covenants running with the land.

(v) Elim Native Corporation shall incorporate the terms of this subsection in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the conveyance lands, including without limitation a leasehold interest.

(vi) The covenants, terms, conditions, and restrictions of this subsection are covenants running with the land and shall be binding upon Elim Native Corporation and the United States, their successors and assigns.

(vii) Appropriate administration and enforcement provisions shall be incorporated into the Memorandum of Understanding authorized by this subsection.

(viii) The United States shall retain the right of prosecutorial discretion without waiver of any such reservations, covenants, or conditions, in the enforcement of any reservation, covenant, or condition.

(3) The Bureau of Land Management shall reserve easements to the United States for the benefit of the public pursuant to section 17(b) of this Act in the conveyance to the Elim Native Corporation.

(4) The Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the conveyance to the Elim Native Corporation.

(e) **FINALITY OF SELECTIONS.**—Selection by the Elim Native Corporation of lands under subsection (d) and final conveyance of those lands to Elim Native Corporation shall constitute full satisfaction of any claim of entitlement of the Elim Native Corporation with respect to its land entitlements under section 19(b).

(f) **IMPLEMENTATION.**—There are authorized to be appropriated such sums as may be necessary to implement this section.

A P P E N D I X

THE COASTAL COALITION,
Anchorage, AK, October 8, 1999.

Re Elim Native Corporation Land Restoration proposal.

Hon. DON YOUNG,
Chairman,

Hon. GEORGE MILLER,
House of Representatives, Committee on Resources, Washington, DC.

DEAR GENTLEMEN: I just wanted to offer a few words in support of the proposal before your committee to return to the Elim Corporation 50,000 acres of land that had been deleted in 1929 by Executive Order.

It is my understanding from the history of this issue that the deletion by Executive Order from the Norton Bay Reservation was the result of a concerted effort by non-Natives to gain access to the area for commercial purposes such as fur farming, prospecting and mining. The deletion from the Reservation seemed to be yet another profound injustice perpetrated on Alaska natives. Apparently, Elim people weren't even consulted regarding this deletion.

In my many years living in and working in northwest Alaska, I visited Elim several times, and they were always some of the kindest, most accommodating people I had the opportunity to work with. They certainly seem to care a great deal about their land and cultural heritage.

Before your committee is a remarkable opportunity to right this wrong, and I urge you to act upon this opportunity. The return of 50,000 acres of land to the Elim shareholders seems justified not just on moral and ethical grounds, but also on the grounds of conservation and protection of valuable fish and wildlife habitat. Particularly important is the habitat along the Tubuktoolik River and its watershed.

I would hope that a protective conservation easement or other protective covenant could be included with the transfer in order to secure sustainable protection of the area well into the future. This would not only protect the lands from potentially damaging commercial activities, but would also allow Elim to develop a truly sustainable economy in the region. As the lands are held at present, there are no such protections and the area could easily fall victim to short-term activities against the desires and sentiments of the Elim people.

Returning this land to the Elim people with the protective covenants is a win-win scenario, as it provides ethical redress of some rather outrageous federal activity earlier this century, conservation

of the region, and opportunity for the Elim people to rebuild a sustainable economy on their land.

Thanks for your attention to this very important issue.

Sincerely,

RICK STEINER, *Director.*

DONALD C. MITCHELL,
ATTORNEY AT LAW,
Anchorage, AK, October 8, 1999.

Re Section 7 of H.R. 3013 (Elim Native Corporation Amendment.)

Hon. DON YOUNG,
Chairman, Committee on Resources.

Hon. GEORGE MILLER,
Ranking Member, Committee on Resources, House of Representatives, Washington, DC.

DEAR REPRESENTATIVES YOUNG AND MILLER: On October 5, 1999, Mr. Young introduced, and the Committee on Resources was referred, H.R. 3013, the Alaska Native Claims Technical Amendments of 1999.

In 1971 when it settled Alaska Native land claims by enacting the Alaska Native Claims Settlement Act (ANCSA) the 92d Congress determined that social and economic justice required that Alaska Natives who resided in a village located within the boundaries of a reservation that had been established for their benefit should be afforded an opportunity to select, and to be conveyed legal title to, all public land located within the reservation's boundaries.

The Inupiat residents of the village of Elim took advantage of that opportunity, and the Secretary of the Interior conveyed the Elim Native Corporation legal title to the public land located within the boundaries of the former Norton Bay Reservation, as those boundaries existed in 1971.

ANCSA was a milestone in the history of Congress's relations with Native Americans. But because it was by no means perfect, since 1971 subsequent Congresses have amended ANCSA on numerous occasions to provide Alaska Natives additional land selection opportunities when necessary to ensure that the Act achieves its objectives.

The most important of those objectives is to afford Alaska Natives social and economic justice regarding their ownership of public land they historically used and occupied.

As you know, from 1977 to 1994, I served as counsel to the Alaska Federation of Natives (AFN), which Alaska Natives organized in 1967 to lead the fight for a fair and just land claims settlement. In that capacity I over the years participated in developing a number of amendments to ANCSA that Congress enacted to ensure that the objective of affording Alaska social and economic justice is achieved.

One of the most grievous cases of social and economic injustice of which I became aware during my tenure as AFN's counsel was the caprice with which representatives of the federal executive in 1929 diminished the land rights of the Inupiat residents of the vil-

lage of Elim by adjusting the boundary of the Norton Bay Reservation without their knowledge or consent.

The facts regarding that situation are well-known and uncontroverted. During my tenure at AFN I and others on several occasions attempted to bring the Elim situation to Congress's attention, but we were not successful. As a consequence, I am delighted to find that section 7 of H.R. 3013 attempts to remedy the injustice that was inflicted on the Inupiat residents of Elim in 1929 when the boundary of the Norton Reservation was unfairly, and in my view unlawfully, modified. For that reason, I would respectfully, but strongly, urge you and other members of the Committee on Resources to favorably report section 7 of H.R. 3013 to the U.S. House of Representatives, either as part of H.R. 3013, or as a stand-alone bill.

Sincerely,

DON MITCHELL.

COPELAND, LANDYE, BENNETT AND WOLF, LLP,
ATTORNEY AT LAW,
Anchorage, AK, October 19, 1999.

Re Senate Bill 1702: Elim Native Corporation Land Restoration;
Expression of Support.

Hon. FRANK MURKOWSKI,
Senate Committee on Energy and Natural Resources, Hart Building, Washington, DC.

DEAR SENATOR MURKOWSKI: On October 13, 1999 the Koyuk Native Corporation (KNC) submitted testimony in opposition to Section 7 of the proposed Alaska Native Claims Technical Amendments Act of 1999. Specifically, KNC was caught off guard by the Elim Native Corporation Land Restoration legislation and was quite fearful that Elim's land selection would infringe on the traditional rights of Koyuk.

Since that time, KNC has been in contact with the Elim Native Corporation and their counsel, and has been able to review the proposed legislation and Land Withdrawal Map. Elim has communicated that the land selection was purposefully crafted so as not to infringe upon the rights of Koyuk or to stir controversy.

Accordingly, KNC by and through their counsel, retracts its formal opposition to the Elim Native Corporation Land Restoration legislation, and instead substitutes its April 20, 1994 letter of support to Elim (Enclosed). As always, if there are changes to the proposed legislation that may in any way affect the rights of Koyuk, KNC expects to be informed of such changes through direct and open consultation. Anything less will once again jeopardize KNC's support of the Elim land restoration efforts.

Sincerely,

DAVID AVRAHAM VOLUCK.

KOYUK NATIVE CORPORATION,
Koyuk, AK, April 20, 1994.

ABEL SACCHEUS,
President, Elim Native Corporation, Elim, AK.

DEAR ABEL: I have received your letter requesting a letter of support from the Koyuk Native Corporation.

Let me reiterate that during the past meetings with Elim and with our Board members and Shareholders; we have said we would support you getting land elsewhere other than east of Elim's boundary.

During our February 26, 1994 Annual meeting this issue was discussed and the Board members and Shareholders are in favor of supporting you getting land elsewhere other than east of Elim's present boundary. Therefore on behalf of the Shareholders and Board of Directors of the Koyuk Native Corporation please accept this letter of support for your resolution for Elim pursuing letter (A) according to the map enclosed, which is north of your present boundary.

Good luck with much support from the Koyuk Native Corporation.

Sincerely,

ELVINA SWANSON, *President.*

